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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Christopher J. M. Meade

01-1363

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08/18/2008

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EXAMINER

SPIVACK, PHYLLIS G

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ELECTION

Applicants' Request for Continued Examination (RCE) filed May 28, 2008 is acknowledged and accepted. Claims 1-31, 34, 35 and 37 remain under consideration.

The Restriction Requirement set forth in the Office Action mailed February 28, 2005 is withdrawn.

However, this application contains claims directed to the following patentably distinct species: formulations suitable for inhalation. Species are exemplified in claims 10-31 and 34. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species, such as inhalable powders, propellant-containing metering aerosols and propellant-free inhalable solutions or suspensions. In addition, these species are not obvious variants of each other based on the current record.

Applicants are required under 35 U.S.C. 121 to elect single disclosed species for prosecution on the merits to which the claims will be restricted if no generic claim is finally held to be allowable. Currently, claim 9 is generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require different fields of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicants are advised that to be complete, the reply to this requirement must include (i) election of species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should Applicants traverse on the ground that the inventions or species are not patentably distinct, Applicants should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

Upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The examiner can normally be reached on 10:30 AM-7 PM.

If attempts to reach the Examiner by telephone are unsuccessful after one business day, the Examiner's supervisor, Ardin Marschel, can be reached on 591-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 14, 2008

/Phyllis G. Spivack/
Primary Examiner, Art Unit 1614